

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18825
[Redacted] Petitioners.)	
)	DECISION
)	
)	

On April 8, 2005, the Revenue Operations Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers), proposing tax and interest for tax year 2002 in the amount of \$1,772.

The taxpayers objected to the interest portion of the determination in a letter dated April 22, 2005. The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review. The Tax Commission, having reviewed the file, hereby issues its decision based thereon.

After moving from Idaho to another state in September, 2002, the taxpayers filed an Idaho part-year resident income tax return and received a \$1612 refund. Subsequently, the return was selected for review by the Income Tax Audit Bureau. The Auditor found the taxpayers' return had been prepared incorrectly. The taxpayers reported the income they earned prior to their move out of Idaho and reduced the resulting tax by claiming credit for \$1,609 of taxes paid to another state.

The Bureau sent the taxpayers the NODD with attached documents explaining Idaho Code § 63-3029(9). Idaho Code § 63-3029(9) allows credit for a part-year resident for income taxes paid to another state in regard to income which is earned while the taxpayer is domiciled in this state and subject to tax in such other state.

The taxpayers' Idaho part-year resident return reported only Idaho income and their [Redacted] part-year resident return reported only [Redacted] income. The taxpayers' [Redacted] income was not included in their Idaho return, and their Idaho income was not included in their

[Redacted] return. No income was subject to tax by both states.

In the letter protesting the NODD, [Redacted] did not question the audit results; he did question the amount imposed for interest. He said he would have expected to get a correction letter within two to six months – not three years.

The taxpayers' 2002 Idaho part-year resident income tax return was filed and a refund was issued. The error in the return was not discovered until the return was selected for audit review. The audit rotation is controlled by a certain timeframe for handling the high volume of tax returns subject to review.

Idaho Code § 63-3045(6) states:

- (a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.
- (b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.
- (c) The rate of interest accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on October 15 of the immediately preceding calendar year rounded to the nearest whole number.

The Idaho Supreme Court heard Union Pac. R.R. v. State Tax Comm'n, 105 Idaho 471, 670 P.2d 878 (1983). In this case, there was a substantial delay in resolving the taxpayer's liability. In addressing whether the taxpayer was required to pay interest, the Court stated:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Interest imposed under Idaho Code § 63-3045 is a mandatory charge. The charge is calculated from the due date of the return at a rate that is established by the legislature each year. Interest charged in the Notice of Deficiency Determination must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated April 8, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest for 2002:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,579	\$ 193	\$ 1,772
	PAYMENT RECEIVED	<1,579>
	TOTAL DUE	<u>\$ 193</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]
